

§ 4211.1

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AUTHORITY: 29 U.S.C. 1302(b)(3); 1391(c)(1), (c)(2)(D), (c)(5)(A), (c)(5)(B), (c)(5)(D), and (f).

SOURCE: 61 FR 34097, July 1, 1996, unless otherwise noted.

Subpart A—General

§ 4211.1 Purpose and scope.

(a) *Purpose.* Section 4211 of ERISA provides four methods for allocating unfunded vested benefits to employers that withdraw from a multiemployer plan: the presumptive method (section 4211(b)); the modified presumptive method (section 4211(c)(2)); the rolling-5 method (section 4211(c)(3)); and the direct attribution method (section 4211(c)(4)). With the minor exceptions covered in § 4211.3, a plan determines the amount of unfunded vested benefits allocable to a withdrawing employer in accordance with the presumptive method, unless the plan is amended to adopt an alternative allocative method. Generally, the PBGC must approve the adoption of an alternative allocation method. On September 25, 1984, 49 FR 37686, the PBGC granted a class approval of all plan amendments adopting one of the statutory alternative al-

location methods. Subpart C sets forth the criteria and procedures for PBGC approval of nonstatutory alternative allocation methods. Section 4211(c)(5) of ERISA also permits certain modifications to the statutory allocation methods. The PBGC is to prescribe these modifications in a regulation, and plans may adopt them without PBGC approval. Subpart B contains the permissible modifications to the statutory methods. Plans may adopt other modifications subject to PBGC approval under subpart C. Finally, under section 4211(f) of ERISA, the PBGC is required to prescribe rules governing the application of the statutory allocation methods or modified methods by plans following merger of multiemployer plans. Subpart D sets forth alternative allocative methods to be used by merged plans. In addition, such plans may adopt any of the allocation methods or modifications described under subparts B and C in accordance with the rules under subparts B and C.

(b) *Scope.* This part applies to all multiemployer plans covered by title IV of ERISA.

§ 4211.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: Code, employer, IRS, multiemployer plan, PBGC, plan, and plan year.

In addition, for purposes of this part:

Initial plan year means a merged plan's first complete plan year that begins after the establishment of the merged plan.

Initial plan year unfunded vested benefits means the unfunded vested benefits as of the close of the initial plan year, less the value as of the end of the initial plan year of all outstanding claims for withdrawal liability that can reasonably be expected to be collected from employers that had withdrawn as of the end of the initial plan year.

Merged plan means a plan that is the result of the merger of two or more multiemployer plans.

Merger means the combining of two or more multiemployer plans into one multiemployer plan.

Nonforfeitable benefit means a benefit described in § 4001.2 of this chapter plus, for purposes of this part, any adjustable benefit that has been reduced

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by the plan sponsor pursuant to section 305(e)(8) of ERISA or section 432(e)(8) of the Code that would otherwise have been includable as a nonforfeitable benefit for purposes of determining an employer's allocable share of unfunded vested benefits.

Prior plan means the plan in which an employer participated immediately before that plan became a part of the merged plan.

Unfunded vested benefits means an amount by which the value of nonforfeitable benefits under the plan as defined for purposes of this section, exceeds the value of the assets of the plan.

Withdrawing employer means the employer for whom withdrawal liability is being calculated under section 4201 of ERISA.

Withdrawn employer means an employer who, prior to the withdrawing employer, has discontinued contributions to the plan or covered operations under the plan and whose obligation to contribute has not been assumed by a successor employer within the meaning of section 4204 of ERISA. A temporary suspension of contributions, including a suspension described in section 4218(2) of ERISA, is not considered a discontinuance of contributions.

[61 FR 34097, July 1, 1996, as amended at 73 FR 79635, Dec. 30, 2008]

§ 4211.3 Special rules for construction industry and IRC section 404(c) plans.

(a) *Construction plans.* Except as provided in §§ 4211.11(b) and 4211.21(b), a plan that primarily covers employees in the building and construction industry shall use the presumptive method for allocating unfunded vested benefits.

(b) *Section 404(c) plans.* A plan described in section 404(c) of the Code or a continuation of such a plan shall allocate unfunded vested benefits under the rolling-5 method unless the plan, by amendment, adopts an alternative method or modification.

§ 4211.4 Contributions for purposes of the numerator and denominator of the allocation fractions.

Each of the allocation fractions used in the presumptive, modified presumptive and rolling-5 methods is based on

contributions that certain employers have made to the plan for a five-year period.

(a) The numerator of the allocation fraction, with respect to a withdrawing employer, is based on the "sum of the contributions required to be made" or the "total amount required to be contributed" by the employer for the specified period. For purposes of these methods, this means the amount that is required to be contributed under one or more collective bargaining agreements or other agreements pursuant to which the employer contributes under the plan, other than withdrawal liability payments or amounts that an employer is obligated to pay to the plan pursuant to section 305(e)(7) of ERISA or section 432(e)(7) of the Code (automatic employer surcharge). Employee contributions, if any, shall be excluded from the totals.

(b) The denominator of the allocation fraction is based on contributions that certain employers have made to the plan for a specified period. For purposes of these methods, and except as provided in § 4211.12, "the sum of all contributions made" or "total amount contributed" by employers for a plan year means the amounts considered contributed to the plan for purposes of section 412(b)(3)(A) or section 431(b)(3)(A) of the Code, other than withdrawal liability payments or amounts that an employer is obligated to pay to the plan pursuant to section 305(e)(7) of ERISA or section 432(e)(7) of the Code (automatic employer surcharge). For plan years before section 412 applies to the plan, "the sum of all contributions made" or "total amount contributed" means the amount reported to the IRS or the Department of Labor as total contributions for the plan year; for example, for the plan years in which the plan filed the Form 5500, the amount reported as total contributions on that form. Employee contributions, if any, shall be excluded from the totals.

[73 FR 79635, Dec. 30, 2008]